



December 15, 2000

Mr. Isaac Brown, III
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2000-4725

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142259.

The Celina Independent School District (the "school district"), which you represent, received a request for the following information about a school teacher:

1. employment application;
2. employee history, including salary and position;
3. complaints filed against her;
4. her responses to complaints;
5. materials compiled during any investigations of her; and
6. the results of those investigations.

You contend that some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We assume that you have already disclosed the other requested information.

Section 552.117 provides in part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024.

Section 552.117(1), together with section 552.024, permits a current or former government official or employee to choose whether to allow public access to information covered by section 552.117. We believe that section 552.117 is broad enough to cover home e-mail addresses. The legislative history of section 552.117 makes clear that its purpose is to protect public employees from being harassed at home. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985). With this purpose in mind, we conclude that a home e-mail address is "information that relates to" a person's home address or home telephone number, and is, therefore, within the scope of section 552.117. *Cf.* Open Records Decision No. 622 (1994) (in enacting section 552.117, the legislature intended to include former home addresses and telephone numbers in the phrase "information relating to the home address or home telephone number" of a public employee).

Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). If the school teacher requested confidentiality under section 552.024 before the school district received the request for information, then she is entitled to protection under section 552.117. Thus, the school district must withhold from disclosure the highlighted information in exhibit B if the school teacher timely elected to keep this information confidential.

We further note that a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of the federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the school district pursuant to any provision of law, enacted on or after October 1, 1990.

Exhibit C is a copy of the school teacher's transcript. Section 552.102(b) of the Government Code protects from public disclosure:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Accordingly, we conclude that the school district must release the degree obtained and the curriculum from the transcript. The remaining information in the transcript must be withheld pursuant to section 552.102(b).

Lastly, you assert that section 552.101 excepts exhibit D from public disclosure. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 411.097 of the Government Code provides that criminal history record information relating to an applicant for employment by a school district that the school district obtains from the Department of Public Safety may not be released to any person, other than certain named parties, which are not applicable here. *See also* 28 C.F.R. § 20.21(c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Therefore, assuming that you have CHRI about the employee in your possession, you must withhold the CHRI from the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673- 6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref: ID# 142259

Encl: Submitted documents

cc: Mr. Matt Frazier
Education Reporter
Arlington Star-Telegram
1111 West Abram
Arlington, Texas 76013
(w/o enclosures)